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ABSTRACT

This policy brief addresses the first two rulings of the North Carolina lawsuit on the state constitutional right to education, commonly referred to as "Leandro." The "Leandro" Supreme Court opinion and subsequent court rulings add a model of adequacy that dovetails almost perfectly with standards-based education reform. Model elements include: (1) The court will not require a major overhaul of North Carolina's education system or funding system; (2) the court has significantly limited the scope of potential constitutional issues; (3) the ABCs accountability program is a critical component of the state's constitutional obligations; (4) the court aligns constitutional standards with the ABCs by setting grade-level proficiency as a clear benchmark for whether a child is on track to receive a sound basic education; (5) the court sets a requirement that local school districts must use all available resources first to provide all children with an equal opportunity to receive a sound basic education; and (6) the state is constitutionally obligated to provide preschool for at-risk 4-year-olds. The court deferred to the state legislative and executive branches in prescribing how to provide preschool. An outcome of the rulings is the inclusion of the state accountability program in the adequacy framework. (Contains 52 references.) (RT)

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SERVE Policy BRIEF

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# Leandro: The Merging of Adequacy and Standards-Based Reforms

*by Ann McColl, J.D.*

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## Overview

This policy brief addresses the North Carolina lawsuit on the state constitutional right to education, commonly referred to as *Leandro*.[1] While the litigation is of greatest significance to North Carolina, it likely will cause a ripple effect in others, as courts, legislators, and policymakers look beyond their own state boundaries for new approaches to educational reform. The broad context for the *Leandro* lawsuit is the history in this country of school finance litigation. The narrower framework is the legal concept of "adequacy" and how it has evolved through various courts. The *Leandro* Supreme Court opinion and the subsequent trial court rulings add a model of adequacy that dovetails almost perfectly with standards-based education reform. The trial court rulings also channel broad concepts of adequacy into an intense focus on the needs of at-risk children, including a mandate for preschool programs.

Like other school finance litigation, it is difficult to say when, if ever, the final chapter has been concluded. In the *Leandro* lawsuit, more trial court rulings are expected, and there is the possibility of appeals. Nonetheless, it is time to begin charting North Carolina's place in school finance litigation and the significant implications for this state, as well as possibly for others, in creating specific constitutional mandates for standards-based reforms and interventions for at-risk children.

## Experiences of Other States in School Finance Litigation

Five of the six states included within the SERVE region have experienced school finance litigation. Of these states, three (Florida, South Carolina, and Georgia) have court opinions finding the state educational and finance systems to be constitutional, although a more recent South Carolina Supreme Court opinion has acknowledged that a claim can be made on the basis of a constitutional right to a minimally adequate education. North Carolina and Alabama have trial court orders to respond to specified constitutional deficiencies. Only Mississippi has not experienced litigation on the state constitutional right to education.

The experiences of the SERVE states also can be considered within the evolution of school finance litigation. Over time, litigants have pursued different strategies. These strategies generally can be categorized as focusing on federal constitutional rights, equity arguments, and adequacy-based arguments (Odden, 2000).

### Phase I: Federal Constitutional Rights (1960s to early 1970s)

In the first wave of school finance litigation, proponents of a fundamental right to education focused their efforts on the United States Constitution. This was a logical approach because it would avoid the need for litigating in each of the 50 states on different state constitutions. However, *San Antonio v. Rodriguez*[2] foreclosed this possibility, finding that the United States Constitution does not provide a constitutional guarantee of education.

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## Phase II: State Constitutional Equity Lawsuits (Primarily in the 1980s)

When federal lawsuits were unsuccessful, litigants turned to state constitutions. Although notions of "equity" and "adequacy" are blurred concepts at best, these earlier state cases focused largely on the inequities in funding caused by differing abilities of local communities to support the schools. Equity in this context essentially meant providing equal funds to schools. Texas is a prime example of a state whose funding system was overhauled as a result of finding constitutional inequities.[3] By comparison, in Georgia, the highest court declared the state system to be constitutional, even though it recognized that the "equalization of the system is a poor one."[4] The court reasoned that the constitution did not place an explicit duty on the state to equalize educational opportunities. The court also refused to enter the domain of adequacy disputes, finding that "it is primarily the legislative branch of government which must give content to the term 'adequate.'"[5] In 1988, South Carolina's highest court also had little trouble finding funding to pass constitutional challenges on the basis of equal protection.[6] However, in 1999, the court followed other adequacy lawsuits and held that the constitution does require the General Assembly to provide the opportunity for each child to receive a "minimally adequate education." The court remanded the claim for further proceedings.[7]

## Phase III: State Constitutional Adequacy Lawsuits (Mostly in the 1990s)

> "Education is perhaps the most important function of state and local governments....In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."
> *—Brown v. Board of Education, cited in Kentucky's landmark opinion, Rose v. Council for Better Education.*

Equity lawsuits appealed to litigants, in part, because they were relatively straightforward. The parties sought to compare financial information about the relative ability of local communities to pay for education and the resulting disparities in the amount of funding directed to school districts. However, equal funding arguments were not popular because they necessarily placed a cap on spending at the local level, forcing some communities to do less than they were able and willing to do for their schools.[8] Adequacy arguments provided a reasonable response to this concern. While locals could always spend more, a state constitution would ensure funding and programs necessary to reach a certain standard of adequacy.

Kentucky is one of the states to turn to adequacy arguments. Using as its "polestar" the quote above from the United States Supreme Court opinion, *Brown v. Board of Education*, the Kentucky Supreme Court focused on equal opportunity and found the entire system to be unconstitutional. The court set a standard for adequacy that included seven "capacities" that children should obtain, along with sufficient funding and monitoring of the schools by the General Assembly[9] with sweeping educational reforms and new funds for schools. The "KERA" plan has its proponents and protagonists, but it has unquestionably had a major impact on education in Kentucky. In addition, other courts have followed Kentucky's lead. Among SERVE states, an Alabama court applied Kentucky's adequacy framework and found the state system to be unconstitutional.[10]

In court opinions like Kentucky's, equity has been transformed from the concept of access to equal resources to access to an equal opportunity. While such equal opportunity arguments were becoming more accepted, litigants still made straight financial equity arguments. This may be because adequacy arguments based on an equal opportunity also have their drawbacks. In upholding the constitutionality of the state plan, the Florida Supreme Court was clearly concerned about the degree of judicial intervention involved in adequacy cases. In a 4–3

opinion, the court stated, "While we stop short of saying 'never,' appellants have failed to demonstrate in their allegations or in their arguments on appeal, an appropriate standard for determining 'adequacy' that would not present a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature, both generally (in determining appropriations) and specifically (in providing by law for an adequate and uniform system of education)."[11]

Equal opportunity or adequacy arguments also necessarily have the state and the local school districts pointing fingers at each other on who is at fault for not providing the equal opportunity. Has the state provided sufficient resources? Has the school district effectively utilized its resources? And how important are financial resources in delivery of the educational program? In the recent New York City constitutional challenge, the trial court rejected the state's narrow analysis of the connection between student performance and spending, in general, and the state's expert testimony that there was little or no connection between student performance and improving teacher quality or facilities or reducing class size. Taking the issue beyond just financial resources, the court also held the state accountable for removing impediments to a sound basic education, even if the impediment was corruption in local governance.[12]

While some states have refused to venture into the adequacy arena, the model has been further expanded in other states. New Jersey added significant elements, including requirements for the state to fund whole-school reform models such as Roots and Wings and preschool for at-risk children in specified school districts.[13] In speculating on future directions of the adequacy model, Allan Odden, professor, University of Wisconsin-Madison, and Lawrence Picus, professor, University of Southern California, stated: "We suggest that it is entirely possible that some court in the future might require some uniform, minimum but high level of student achievement results. This would be a natural evolution of the adequacy issue and the ultimate test of whether a comprehensive education program actually could deliver student achievement results."[14] The time has come with the Leandro trial court rulings.

Has the state provided sufficient resources? Has the school district effectively utilized its resources? And how important are financial resources in delivery of the educational program?

## Progress of the Leandro Lawsuit

The Leandro lawsuit was filed in 1994, well into the phase of adequacy litigation across the country. A group of poor school districts as well as some of the school children attending schools in these districts (along with their guardians *ad litem*) initiated the lawsuit alleging that the state had violated constitutional rights to education. The plaintiff school districts are relatively poor with fewer local resources. Some urban school districts and some of their children and guardians *ad litem* joined the lawsuit to assert the needs of urban school districts. Before any evidence was presented, the state contested the nature of the constitutional right to education and the types of claims that could be presented to the court. This litigation eventually led to the North Carolina Supreme Court's landmark decision in 1997 finding that the state constitution guarantees "every child of this state an opportunity to receive a sound basic education in our public schools." The state Supreme Court rejected an equity argument made by the poor school districts, finding that the North Carolina Constitution expressly allows counties to supplement state funds. With some direction given to the trial court on assessing whether the state had met its constitutional obligations, the lawsuit was remanded for trial. After a number of procedural issues were addressed, the trial began in September 1999. Because of the complexity of determining whether students had been afforded a sound basic education, the parties agreed to initially focus on Hoke County Schools as a school district representative of the concerns of the poor school districts that were plaintiffs in the case.

Rather than one ruling, the trial court chose to issue its opinion in installments. The first two installments were issued in October 2000 on (1) the constitutionality of the state's education and funding delivery system and (2) the education delivery system as it applies to at-risk students. The third ruling was issued on March 26, 2001. It was expected to address whether the state has provided sufficient funds for students in Hoke County Schools to obtain a sound basic education. Instead, the court required the parties (the state and the school districts participating in the lawsuit) to develop a plan that strategically focuses available resources and funds toward providing all children, including at-risk children, with the opportunity to obtain a sound basic education. **This plan requirement and other findings of the Hoke III ruling will be addressed in a separate SERVE *Policy Brief*. This brief addresses the first two rulings.**

## Major Directions in Leandro in the Trial Court Rulings

The key issue for the trial court was to determine how to assess the Supreme Court's adequacy standard of a "sound basic education." The Supreme Court had defined this standard, using some of the same "capacities" identified in the Kentucky opinion. The elements of a sound basic education are as follows:

1. Sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;

2. Sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;

3. Sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and

4. Sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.[15]

The arguments made by the parties reflected the gulf in potential interpretations of the standard imposed by this definition, from the state's focus on "fundamental" to the plaintiff's focus on the ability to compete equally. The trial court has resolved this issue. In reflecting upon the definition, the trial court stated: "Let there be no mistake that the Supreme Court has declared that [the] ultimate goal of a child's receiving a sound basic education, regardless of which academic path the child ultimately chooses, is that he or she has been afforded the opportunity to achieve 'sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.'"[16]

The trial court further defined the parameters of a sound basic education in the 192-page first ruling and 42-page second ruling. The court's holdings and analysis are described below as six major directions. Each of these is an element of the court's adequacy model.

**#1** The court will not require a major overhaul of North Carolina's education system or funding system, finding that much of the system meets or exceeds constitutional requirements and that the system provides the flexibility to accommodate any new requirements.

The court held that the education and finance delivery system is constitutional. In this ruling, the court did not address the constitutionality of the system as it is implemented or the sufficiency of funding. Still, it is an important victory for the state. A more incremental approach lessens the likelihood of protracted litigation. And of great importance to legislators and policymakers, it allows North Carolina to stay the course on key reforms. It does not, however, mean that the system will remain untouched. Rather, the court seems to be willing to possibly modify rather than overhaul the system.

Much of the court's reasoning seems to be related to several themes: (1) the court's recognition of the significant progress of the state in building standards-based reform, (2) the court's deference to the executive and legislative branches, and (3) the court's belief that the system is flexible enough to respond to any new requirements.

### State Progress in Reforms

This lawsuit might have had a different outcome if the decision had been rendered closer to the lawsuit's initiation. Between the filing of the lawsuit in 1994, and the issuance of the Supreme Court opinion in 1997, two major reforms were passed by the North Carolina General Assembly: the ABCs accountability program and the Excellent Schools Act. The ABCs included the mandate for accountability through a testing program on the basics and site-based management with added financial flexibility. The Excellent Schools Act mandated higher standards for licensure and created the expectation for significant funding for salaries. These reforms spawned further legislative efforts as well as State Board of Education policies. The court enthusiastically embraced the ABCs finding:

> "The ABCs shifted the focus of state-level quality control to defining educational goals and measuring student achievement of those goals and shifted substantial control over the expenditure of educational resources to achieve those goals to individual schools."[17]

The court also recognized other efforts and accomplishments of the state, including those on the chart below.

**Key Educational Reforms During the Period of the Lawsuit**

- **Lawsuit filed, 1994**
- **ABCs Accountability Program, 1996**
- **Excellent Schools Act, June 1997**
- **North Carolina Supreme Court Opinion, July 1997**
- **Between 1996–1997 and 1999–2000 nearly half of the gap between the average teacher salary in North Carolina and the United States was eliminated.**
- **North Carolina has the highest number of teachers holding National Board Certification in the nation.**
- **Since the litigation began in 1994, state funding for public schools has increased by 40%.**
- **Low-wealth supplemental funding increased from $40 to $60 million.**
- **Funds for at-risk students in 1999–2000 included**
  - **$52/average daily membership (ADM)**
  - **$286/low-income students**
  - **$163/every student who scored below grade level in grades three through eight**

### Deference

Deference is another defining feature of the trial court's rulings. As stated by the trial court,

citing the Supreme Court opinion, "This Court is expressly bound to 'grant every reasonable deference to legislative and executive decision branches when considering whether they have established and are administering a system that provides children of the various school districts of the state a sound basic education.'"[18]

Deference did not mean that the court shied away from creating an adequacy model or mandating programs. Indeed, the court at times focused on elements not in dispute between the parties or even raised by the parties. But the court was deferential to the legislative and executive branches in reviewing the education and funding system. For example, the trial court stated it "will not substitute its judgment for that of the State Board as to the sufficiency of the minimum score [for licensure exams], and there has not been clear evidence presented that the scores are too low to comply...."[19] Or, in identifying the potential "masking effect" that can occur in the ABCs testing program when low scores of a subgroup of students are hidden by high test scores of other students, the court simply stated that the ABCs was a work in progress and heading in the right direction.[20]

### Funding Flexibility in the System

The trial court held that the funding delivery system, including average daily membership, low-wealth, small-county, at-risk, and other areas of funding, "is valid, sound, and flexible enough to provide for the delivery of adequate funding to all school systems in North Carolina...."[21] The court also noted that "one of the most impressive and strongest aspects of North Carolina's educational funding delivery system is its flexibility. The system may be easily changed to meet new funding needs and programs in education. So long as this flexibility exists, the structure of the system will remain sound."[22] In the second ruling, the court demonstrated its confidence in the flexibility of the funding system, requiring the state to provide preschool for all at-risk four-year-olds.

**#2** In identifying the critical responsibilities of the state and the means for measuring whether the state met those responsibilities, the court has significantly limited the scope of potential constitutional issues.

Selecting the constitutional framework is key for determining the outcome of whether the system is constitutional (Odden, Picus, 2000). In the first ruling, the trial court identified the key elements of a constitutional educational delivery system as the following:

- Curriculum and standard course of study
- Teacher licensure and certification standards
- Funding delivery system
- ABCs accountability system
- At-risk students
- Sufficiency of funding

The first four elements are addressed in the trial court's first ruling. For each of these elements, the court set out the state's programs in great detail and explained its analysis for determining that the state had met or exceeded its constitutional mandate. In doing so, the court was not as much focused on resolving a dispute between the parties, as it was in establishing its own framework for the standard of adequacy. Some of these elements were not disputed or even raised for consideration by the parties. For example, even though the curriculum established by the Standard Course of Study was not disputed by the school districts, the court gave an in-depth description of how the curriculum matched the specific language in the court definition of a sound basic education.

By setting out what factors and standards are relevant to determining a sound basic education, the court also has implicitly and at times explicitly stated what is not relevant. For example, the court rejected high school diplomas as evidence of a sound basic education, finding that the standard for receiving a high school diploma was too low. And, while the court acknowledged the state's testimony that Hoke County Schools had access to free staff development from the state, it did not suggest that the state had any obligations to address staff development separate from its teacher licensure program.

There are numerous other potential constitutional issues that are not addressed in the trial court rulings. For example, it is not clear in the rulings made so far whether individuals may sue the state or local school district and seek individualized remedies. Nor is it clear how the constitution and the right to the opportunity for a sound basic education might be applied in different circumstances. For example, other states with adequacy-based constitutional standards have faced litigation on the state constitutional right to a safe school or, on the flip side, the right to remain in school or be provided with educational services during suspensions.[23]

**#3** The ABCs accountability program is a critical component of the state's constitutional obligations.

The court described the testimony of Dr. Jay Robinson, a state witness and former chair of the State Board of Education, that the ABCs "is by far the best thing we've done to ensure that every child gets a good, basic education."[24] The court also agreed with Dr. Robinson that the ABCs program is "one of the healthiest things the state has ever done."[25] The court went on to find that there was clear and convincing evidence that the ABCs program has improved student performance, continues to provide targeted state assistance, and creates incentives for improvement.[26]

But the court went a step further than Dr. Robinson's testimony or the state's position and declared that the ABCs was not only a beneficial program, but also a constitutionally "valid, appropriate, and necessary program." The court stated, "If the ABCs program were not in place, a similar account-

ability program would, in the Court's opinion, be required so the state and the public could have a statewide accountability system to measure educational progress and to assist in measuring whether or not each child is receiving the equal opportunity to obtain a sound basic education as the Constitution requires."[27]

This is a critical ruling for North Carolina in several respects. First, it removes the program from the political arena to a constitutional safety zone. It will allow the state to "stay the course" on this key reform. In other words, although the ABCs might be a work in progress, as noted by the court, it cannot be stopped. The ruling also is important in defining the state's role. Consistent with adequacy models and standards-based reform, the trial court has identified that two key roles of the state are to provide assistance and require accountbility of the local level. As a constitutional mandate, it heightens the state's responsibility to provide the assistance and creates more leverage to insist on the accountability. And lastly, making the ABCs a constitutional requirement is important because it gives the court a way to measure whether students are on track for getting a sound basic education. For this purpose alone, it can be understood why the court said that the ABCs was a crucial part of the state's responsibilities. The way in which the ABCs testing program is used to measure constitutional obligations is the subject of number four, below.

**#4** The court aligns constitutional standards with the ABCs by setting grade-level proficiency as a clear benchmark for whether a child is on track to receive a sound basic education.

The trial court tackled a key question early in the first ruling: "Because the differences between the parties as to what the minimum performance standard of the sound basic education is, or is not, are so extreme, the Court has to first determine what the minimum level of academic achievement is under the *Leandro* standard. Without making this initial determination, there can be no baseline in place for the Court to anchor its review of the North Carolina educational delivery system."[28] The court then defined the standard: "The Court has determined that the minimum level of academic performance under *Leandro* is performance at or above grade level as defined by the ABCs and DPI ([Department of Public Instruction] Level III or above). Academic performance below grade level (Level II) is a constitutionally unacceptable minimum standard, and the State of North Carolina's argument that academic performance below grade level is sufficient is rejected."[29] The court also emphasized that the current performance standards cannot be lowered.[30]

> The ABCs shifted the focus of state-level quality control to defining educational goals and measuring student achievement of those goals and shifted substantial control over the expenditure of educational resources to achieve those goals to individual schools.

The court has taken the adequacy framework developed by other courts to its natural evolution by setting such a clear constitutional standard for performance tied to the state testing program (Odden, Picus, 2000). There are many important implications in doing so. First, it makes clear that the constitutional standard is targeted at all at-risk students as identified by the state testing program, not a smaller, more seriously at-risk cohort as argued by the state. By equating the standard with grade-level proficiency, it also means that a significant proportion of students are not currently on track as required. Depending upon the grade and test, the percentage varies, but it is easily 20 to 30% of the overall student population, and much higher among certain subgroups of students and certain localities.[31]

Setting the benchmark for a sound basic education at grade-level proficiency may have other implications for determining whether constitutional requirements are met. By having such a clear measure, the importance of other criteria may be minimized, including other indicators of student performance, such as student grades, as well as "input" variables, such as curriculum, licensure requirements, and funding. Having a specific standard for an output also raises the possibility of whether the standard may become outdated in assessing the much more fluid Supreme Court definition of the opportunity for a sound basic education. Over time, it is at least possible that grade-level proficiency will not be adequate to enable each child "to compete on an equal basis with others in further formal education or gainful employment in contemporary society."

The wording itself also raises a potential litigation issue: will setting such a clear benchmark create absolute rights to obtaining grade-level proficiency? And given that test data can be analyzed at the individual level or some cohort, might it give rise to a constitutional version of education malpractice lawsuits? Much of the opinion is against such an interpretation: the focus tends to be on an "equal opportunity" to obtain a sound basic education rather than on absolute obtainment of a certain level of performance. Furthermore, the court seems to back off of absolute standards at different times in the opinions. For example, the following seems to set an absolute standard: "A student who is performing below grade level (as defined by Level I or Level II) is not obtaining a sound basic education under the *Leandro* standard. A student who is performing at grade level or above (as defined by Level III or IV) is obtaining a sound basic education under the *Leandro* standard."[32] But then, these excerpts suggest that it is a more complicated assessment of whether the state has met its constitutional obligations:

> *A school or a school system that has 90% of its children scoring at Level III or above would certainly be found in compliance with* Leandro *even as to the 10% who did not achieve the sound basic education standard.*[33]

*Because students will learn different things at different times depending on their ability, effort, and opportunity to obtain a sound basic education, the fact that a student fails to demonstrate a satisfactory level of academic achievement, e.g., a level of performance that indicates that the student is receiving a sound basic education (performing at grade level or Level III or above) does not, in and of itself, prove that the state has failed to provide that student the equal opportunity for a sound basic education or that the opportunity to obtain a sound basic education does not exist in the student's school or school system.*[34]

*In any event, the growth and gain scores, standing alone, are not an adequate indicator of the quality of education being provided. They are, however, a factor the Court can consider in determining whether or not students are receiving a sound basic education.*[35]

There are other student performance measures considered by the trial court. The court set the standard that a "D" grade does not meet the minimal standards for a sound basic education. "A student who achieves a 'D' may pass, but that student has not performed at the level expected to obtain a sound basic education."[36] The court also placed great weight on a teacher's determination of grades. It is not clear how grades will be used in concert with test scores, except that it still appears that Level III test scores (grade-level proficiency) is the absolute minimum standard in tested subjects.

**#5** The court sets a requirement that local school districts must use all available resources first to provide all children with an equal opportunity to receive a sound basic education.

In the informal oral arguments conducted by the court on August 18, 2000, the court asked the parties to respond to a hypothetical: if there was a known constitutional deficiency, must a local board use its funds first to correct the deficiency before allocating resources to programs not related to providing a sound basic education? The lawyers for the poor school systems and urban school systems said yes. In the court ruling, this hypothetical is translated to a strict evidentiary burden for the poor and urban school districts. The court said, "It is not the state's burden to show whether the funds allotted for any particular purpose are sufficient. Rather, plaintiffs have the burden to prove by clear evidence that a particular educational program is a necessary component of the opportunity for a sound basic education; that the program is not provided; and that all available financial resources—state, federal, and local—have been exhausted to prove other programs necessary to provide the children with an equal opportunity to obtain a sound basic education."[37]

The court then went a step further in establishing a general mandate for local school districts: "The requirement that all children in every county have an equal opportunity to receive a sound basic education mandates that the funds appropriated and applied from whatever source, be first used to satisfy the equal opportunity to receive a sound basic education mandate before funds are spent on programs not mandated by the constitutional threshold set forth in *Leandro*."[38]

This bold mandate is made more significant by the fact that the constitutional deficiencies are now so clear. After all, the burden is slight if the constitutional standard is vague and difficult to tie to particular school activities. But the impact is great when school districts can easily assess whether students are at grade-level proficiency and whether they are on track for a sound basic education.

If this standard remains through any appeals process, it will raise many practical concerns for how districts operate. With the complexity of funding sources and requirements for various categories of funding, it is difficult to implement the type of performance-based budgeting necessitated by the court's ruling. This complexity is further multiplied by the efforts to move the budget-making process from the district level to the school level. Districts also face a real dilemma in allocating any resources for programs and services not related to providing a sound basic education: it cannot be certain it has devoted sufficient resources to the constitutional mandate until the budget is implemented and test scores are available to evaluate the results. These concerns are not unique to this constitutional mandate, but are part of the task in shifting to performance-based budgeting. What is unique about the mandate is the required shift in funding from other programs. At least some districts are likely to be concerned about their ability to serve students well who are not at risk and meet community expectations about curriculum, programs, and services offered by the schools.

While this particular standard may be unique, North Carolina is hardly alone in having greater pressure applied at the local level for use of funds as a part of the adequacy model developed by the court. In the final chapter of the New Jersey school finance litigation, the 1998 Supreme Court ruling requires districts to demonstrate the need for programs such as summer school, after-school tutoring, and social services in order to receive funding.[39] As the facilities phase is implemented, New Jersey state officials have had some concerns about the types of facilities that school districts are seeking to build with the court-mandated funds, while some local district officials have expressed frustration regarding the degree of state supervision.[40] North Carolina is likely to join in the struggle inherent in adequacy models that strengthen fiscal accountability while retaining local control.

**#6** The state is constitutionally obligated to provide preschool for at-risk four-year-olds: the executive and legislative branches must determine how to implement the program at a reasonable and deliberate pace.

The second ruling of the trial court is largely devoted to setting a constitutional mandate of preschool for at-risk four-year-olds and justifying this mandate. The court states: "In conclusion, the Court, based on the clear and convincing evidence, finds and concludes as a

matter of law that under the North Carolina Constitution as interpreted by *Leandro*, the right of each child to an equal opportunity to receive a sound basic education in the public schools is not to be conditioned upon age, but rather upon the need of the particular child, including, if necessary, the equal opportunity of an at-risk child to receive early childhood pre-kindergarten education prior to reaching the age of five and prior to entering five-year-old kindergarten."[41]

This ruling continues the focus of the first ruling on the at-risk child. And much like the first ruling, the mandate is better understood as an element of the adequacy model developed by the court, rather than responding to issues raised by the parties. In fact, the court on its own motion raised the issue of pre-kindergarten education. In addition to citing extensive research on the benefits of early childhood programs, the trial court judge, Howard Manning, described his own experience at seeing defendants in criminal court who had failed in school or the school had failed the child. The court also noted in the second ruling that 82% of the prison population is comprised of high school dropouts. The judge was clearly concerned about the implications for the individual and society if a sound basic education is not obtained.

Preschool programs have not traditionally been a part of the adequacy model developed by courts: New Jersey is the only other state with a court mandate to provide preschool as part of a constitutional lawsuit. Kentucky chose to develop a preschool program as a policy response to its court ruling but had not been mandated to do so.

As a policy choice, preschool is much more common. More than 40 states provide some form of publicly funded preschool.[42] Georgia is the only state that has fully implemented a universal program. It serves the second-highest number of children with 61,000 four-year-olds enrolled or 65% of all four-year-olds in the state.[43] Texas serves the most children with 130,000 of three- to four-year-olds who are at-risk enrolled in 1998–1999 or 20% of all three- to four-year-olds in the state or 80% of those in poverty.[45]

In many European countries, providing universal preschool is the norm, as illustrated above.

### Public Preschool in Selected Countries[44]

**France**
100% of children ages three through five attend preschool, most in public programs

**Italy**
Approximately 92% of children ages three through five attend preschool, most in public programs

**Denmark and Germany**
80% of five-year-olds
70% of four-year-olds
30% of three-year-olds

**United Kingdom and the Netherlands**
Compulsory schooling at age five; almost all four-year-olds attend

**Belgium**
About 95% of children ages three through five

**Luxembourg**
Nearly all four-year-old children

**Greece**
65-70% of three-year-olds

**Spain**
Over 90% of four- and five-year-olds

**United States Public and Private Preschool Enrollment**
81% of five-year-olds
50% of four-year-olds
30% of three-year-olds

## Critical Issues in Establishing Public Preschool

The trial court did not prescribe how the state must provide preschool; rather, it explicitly deferred to the legislative and executive branch to work out programmatic issues and implement preschool in a "reasoned and deliberate pace." North Carolina will face many of the same issues that other states have addressed in providing public preschools. Some of the critical programmatic questions are as follows:

- How should at-risk children be identified?
- Who are the eligible providers?
- What is the required length of the school day?
- What standards and assessments will be implemented in regard to personnel, curriculum, and facilities to ensure quality and safety?
- What governmental entities will have authority and responsibility for the programs at the state and local level, and what types of collaboration will be essential between different entities?

For all states, including North Carolina, these questions are viewed through the lenses of the funding available and the capacity at the local level to provide the programs. North Carolina will also consider these issues through a constitutional lens: how can the state determine if the program is designed and implemented in a manner to ensure that at-risk students will be on track for a sound basic education? North Carolina recently created through a multi-agency collaboration a method for assessing the conditions of children entering school and schools' readiness for children entering kindergarten.[46] Assessments have begun under the new program. The state could look to build upon this program to consider constitutional standards in assessing at-risk preschool children and evaluating school capacity.

## Established Preschool Programs[47]

| State | First Year | Criteria | Funding/ Served | Hours/ Day | Eligible Providers |
|---|---|---|---|---|---|
| **Georgia** | 1992 | 4-year-olds, all | $224 million/ 62,500 | 6.5 | Education, community, or childcare entity |
| **South Carolina** | 1984 | 4-year-olds, AR, academic deficiencies, ESL | $23.2 million/ 16,500 | 2.5 | School districts receive funds: can contract out |
| **Florida*** | 1987 | 3-to-4-year-olds, AR, 75% 4-year-olds of working poor, 25% 3-to-4-year-olds with disabilities, 3-year-olds economically disadvantaged, 3-year-olds nondisadvantaged migrant children | $100.3 million/ 30,700 | 6 | School districts receive funds: can contract out |
| **Texas** | 1984 | 3-to-4-year-olds, AR, unable to speak or understand English, educationally disadvantaged, homeless | $216 million/ 130,000 | 3 | Any district with at least 15 eligible four-year-olds must offer pre-kindergarten—may provide directly or contract out |
| **Kentucky** | 1990 | 4-year-olds, AR, eligible for free school lunches, 3- and 4-year-olds with developmental problems or disabilities | $40 million/ 15,500 | half day | School districts receive funds: can contract out |

**Florida also provides pre-kindergarten programs to approximately 2,500 3-to-4-year-old children of migrant laborers in a separate program at a cost of approximately $3.3 million.*

As North Carolina works to address these critical issues, it can look to the experiences of other states. For example, on the issue of identifying at-risk children, some states use conditions likely to cause children to be at risk, such as poverty, and others seek to assess deficiencies. The trial court identified an array of factors that could cause a child to be placed at greater risk, although the state is not obligated to incorporate these into its identification of eligible children.

These include:

- Low-income families (as measured by free and reduced-price lunch)
- Level of parental education
- Racial and/or ethnic background
- Limited English proficiency

The court noted other factors that also may place students at greater risk: the health status of children, composition of the family (single-parent families), housing status and environment in which the student lives, crime, and whether the parents work.

A critical issue for North Carolina, from a constitutional, financial, and capacity perspective, will be the issues related to the selection of providers, including the categories of eligible providers (public school only or some combination with community agencies and private child development programs); the method for disseminating funding; and the means for holding providers accountable for quality programs. The experiences of other states suggest that it is very difficult to fully provide the program within the public schools. In Georgia, approximately 40% of the programs are offered by public schools and 60% by private providers or other agencies. Similarly, in New York, while the law requires at least ten percent of a district's pre-kindergarten funding to be contracted out to community agencies, the experience has been that more than half has been contracted to local providers.[48] If North Carolina chooses to take a similar approach, the constitutional standard makes it even more critical that providers are accountable for getting at-risk students on track for a sound basic education. Many southern states, including South Carolina, Florida, Texas, and Kentucky, provide funding to the local school district that can then exercise the choice of contracting out to local providers. This approach may help create accountability between outside providers and the local school district.

At a glance, the chart to the left identifies some of the critical choices made by other southern states. Note the clear relationships between funding amounts and the length of the school day.

## North Carolina Profile

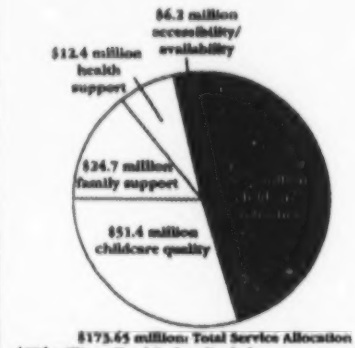
While North Carolina can learn from the approaches taken by other states, it also will be taking into account its own unique circumstances. At the top of the list is the state's established birth through four-year-old program called Smart Start or Partnership for Children. The program is established in all counties with total funding for the 2000–2001 year at $260 million. The authorizing legislation for Smart Start defines the role of this program as follows: "high-quality early childhood education and development services" to "ensure that the developmental needs of children are met in order to prepare them to begin school healthy and ready to succeed."[49] The trial court also noted the broad role of Smart Start: "Smart Start is not principally a pre-kindergarten education program. There is no requirement that Smart Start funds be used for educational programs, but there is no prohibition against such use by a particular Smart Start program. The bottom line is that Smart Start is an existing public-private partnership through which programs for early educational intervention for at-risk children could be established and funded."[50]

Out of the $206 million budget for 1999–2000, approximately $15 million was targeted specifically for preschool programs or child subsidies for four-year-olds. The pie chart, above right, provides a further breakdown of Smart Start funding.

Currently, almost half of the 106,000 four-year-olds in North Carolina attend some type of preschool or regulated childcare program. North Carolina has the nation's highest rate of working mothers: 67% of mothers with children younger than six are employed, compared with 60% nationally.[51] The specific enrollment figures are shown to the right.

Across the state, public schools have embraced providing preschool to various degrees. Schools are required by federal law to provide preschool for eligible children

**Smart Start Service Allocations**


$6.2 million accessibility/ availability
$12.4 million health support
$24.7 million family support
$51.4 million childcare quality
$173.65 million: Total Service Allocation
$206 million: Total Budget (includes program evaluation, state and local partnership operation funds)

**Smart Start Funding Specifically for Four-Year-Olds—1999–2000**

- $8.2 million in preschool programs
- $6.6 million in childcare subsidies for four-year-olds

**(statewide, all funding sources 1999-2000: $33.9 million in subsidies for four-year-olds)**

**Four-Year-Olds Enrolled in North Carolina Programs, 2000**

| Program | Percentage of all 4 year olds | Total Number |
|---|---|---|
| **Regulated childcare centers** | **38%** | **40,469** |
| **Public Preschool**** | **8%** | **8,515** |
| **Family childcare homes*** | **2%** | **2,132** |

**Source: Division of Child Development, data current as of August 2000*

***Source: Departments of Public Instruction, 1999–2000*

**Comparison of Preschool Classrooms in Large School Districts**

| School District | Total Final Enrollment 1999 | Preschool Classrooms 2000–2001 |
|---|---|---|
| **Charlotte-Mecklenburg** | **96,439** | **111** |
| **Cumberland** | **49,219** | **33** |
| **Guilford** | **59,615** | **27** |
| **Robeson** | **23,075** | **24** |
| **Nash-Rocky Mount** | **17,291** | **19** |
| **Vance** | **7,667** | **19** |

**Comparison of Total Enrollment in School Districts with the Most Preschool Classrooms**

| School District | Total Final Enrollment 1999 | Preschool Classrooms 2000–2001 |
|---|---|---|
| **Charlotte-Mecklenburg** | **96,439** | **111** |
| **Wake County** | **90,675** | **5** |
| **Guilford** | **59,615** | **27** |
| **Cumberland** | **49,219** | **33** |
| **Winston-Salem/Forsyth** | **41,752** | **5** |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with disabilities. But in regard to non-disabled children, no state funds are available for preschool programs, and schools must look to using their Title I funds or other source, including applying for Smart Start funds. A couple of ways to get perspective on existing public preschool programs are to compare the number of preschool classes among the largest school districts in the state and to compare the relative size of school districts with the most preschools. Either view reaches the same conclusion: there is little correlation at this time between the size of the school district and the number of preschool programs.

Charlotte Mecklenburg Schools have devoted the greatest attention to preschool programs. The district allocates almost all of its Title I funds to a program called Bright Beginnings, a literacy-based prekindergarten program primarily for low-income children. The trial court described the program and its successes.[52] The Bright Beginnings program also has spread to private child development programs in Mecklenburg County with the use of local Smart Start funds.

North Carolina has some important components in place to begin contemplating providing preschool to at-risk four-year-olds: birth through four programs provided by Smart Start, state and local experience in collaborating on child development issues, consensus on assessing the conditions of children entering kindergarten and school readiness for children, and full-day public kindergarten. SERVE also can provide assistance to the process. Some of SERVE's resources that may be useful include the following:

- Coauthor and publisher of report, *School Readiness in North Carolina: Strategies for Defining, Measuring, and Promoting Success For All Children*, June 2000.
- Other publications include *Terrific Transitions: Ensuring Continuity of Services for Children and their Families*, revised reprinting, 1999.
- SERVE offers training, consultation on early childhood issues, including continuity issues, and assessment of kindergarten and prekindergarten children.
- SERVE also is available to facilitate or participate in partnership-building efforts.

## Further Directions in *Leandro*

This policy brief has focused on the first two rulings. In the third trial court ruling issued March 26, 2001, the court required an intermediate step before ruling on whether

the state provides sufficient funds. The court required the parties (state and school districts participating in the lawsuit) to develop a plan that strategically allocates available resources and funds toward providing a sound basic education. The court expects funds to be allocated for meeting the constitutional mandate before funds are applied to programs not related to meeting the mandate. After the plan is submitted, the court will determine whether state funds are sufficient to implement the plan. The third ruling is consistent with the first two rulings in its focus on at-risk students and emphasis on using resources effectively. As the court said in the first ruling, "Only a fool would find that money does not matter in education. The point is that money should be spent with specific goals in mind and with a method of accountability in place to measure whether or not the money that is spent is being appropriately spent with specific goals in mind and with a method of accountability in place to measure whether or not the money that is spent is being appropriately spent to obtain the results desired."[53] More explanation of the plan requirement, as well as other significant holdings made by the court in the third ruling, will be explored in another SERVE *Policy Brief*.

The state has appealed the rulings. While the outcome is uncertain, the trial court already has accomplished a monumental feat—it has pushed the adequacy framework to include the state accountability program and its testing standards as well as preschool. While it may be a while before the dust settles, the court has framed the discussion that will take place in North Carolina and likely other states for years to come.

## REFERENCES


[1] *Leandro v. State of North Carolina*, 346 N.C. 336, 488 S.E.2d 249 (1997).

[2] 411 U.S. 45 (1973).

[3] *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex.1989); *Edgewood Independent School District v. Meno*, 893 S.W.2d 450 (1995).

[4] *McDaniel v. Thomas*, 243 Ga. 632, 285 S.E. 2d 156 (1981).

[5] *Id.* at 165.

[6] *Richland County v. Campbell*, 364 SE. 2d 470 (1988).

[7] *Abbeville Co. School District v. State of South Carolina*, 335 SC 58, 515 S.E.2d 535 (1999).

[8] *See Rose v. Council for Better Education*, 790 S.W.2d 196 (1989).

[9] *Rose v. Council for Better Education*, 790 S.W.2d 196 (1989).

[10] *Opinion of The Justices No.* 333, 624 So.2d 107 (Ala. 1993) (advisory opinion on complying with trial court order); *Pinto v. Alabama Coalition for Equity*, 662 So.2d 894 (Ala. 1995 (regarding remedy plan); *James v. Coalition for Equity*, 713 So.2d 937 (1997) (regarding attorney fees).

[11] *Coalition for Adequacy and Fairness in School Funding v. Chiles*, 680 So. 2d 400, 408 (1996).

[12] *Campaign for Fiscal Equity v. State of New York*, Index No. 111070/93 (2001).

[13] *Abbot v. Burke*, 153 N.J. 480 (N.J. 1998).

[14] Odden, Picus, 2000, 44.

[15] *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

[16] *Hoke Co. Bd. of Educ. v. State of North Carolina*, 95 CVS 1158, 154 (2000) (Hoke I)

[17] *Hoke I* at 113.

[18] *Hoke I* at 156.

[19] *Hoke I* at 68–69.

[20] *Hoke I* at 137.

[21] *Hoke I* at 190.

[22] *Hoke I* at 118–119.

[23] *See Phillip Leon M. v. Greenbrier County Bd. of Educ*, 199 W. Va. 400, 484 S.E.2d 909 (W. Va. 1996), holding modified by *Cathe A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 490 S.E. 2d 340 (W. Va. 1997). "Plans for 'Universal' Preschool Gain Ground in New York State," *Education Week*, October 25, 2000. New York's prekindergarten program is funded with $225 million for this year and expects to serve more than 52,000 children. Priority has been given to high-needs districts, and preference goes to low-income children. Remaining slots are by lottery. Funding next year will be $500 million and will remain at that level. Districts apply for funding. Each district with a pre-K program must form an advisory board.

[24] *Hoke I* at 137.

[25] *Hoke I* at 123.

[26] *Hoke I* at 141–42.

[27] *Hoke I* at 142.

[28] *Hoke I* at 18–19.

[29] *Hoke I* at 19.

[30] *Hoke I* at 181.

[31] 1999–2000 data maintained by the Department of Public Instruction show that the percentage of students in grades 3–8 that are at grade level is 75.3% in reading, 80.2% in math, and 69.8% in both subjects. The trial court cites test data that 40.8% of elementary and middle school black students are performing below grade level in reading, math, and writing (Levels I and II). *Hoke II* at 39.

[32] *Hoke I* at 118–119 (text is bold-faced and capitalized in the court opinion).

[33] *Hoke I* at 187–88 (bold in original text).

[34] *Hoke I* at 154–55.

[35] *Hoke I* at 129.

[36] *Hoke I* at 166.

[37] *Hoke I* at 82.

[38] *Id,*

[39] *Abbot v. Burke*, 153 NJ 480 (N.J. 1998).

[40] "N.J. Approves $12 Billion School Construction Program," Education Week, August 2, 2000.

[41] *Hoke Co. Bd. of Educ. v. State of North Carolina*, 95 CVS 1158 (2000) (Hoke II), 42.

[42] Denton, "Prekindergarten and Parent Support Programs," Southern Regional Education Board, 2000

[43] Denton, "Prekindergarten and Parent Support Programs," Southern Regional Education Board, 2000

[44] Svestka, 1995. Data from years 1990–1995.

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[49] N.C. Gen.Stat. 143B, Part 10B

[50] *Hoke II* at 28.

[51] "Census: More mothers return to work," News & Observer, October 24, 2000.

[52] *Hoke I at 117-118*


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